

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Petition for Emergency Declaratory  
and Other Relief

)  
)  
)  
)  
)  
)

WC Docket No. 02-202

**COMMENTS OF MPOWER COMMUNICATIONS CORP.  
IN OPPOSITION TO EMERGENCY PETITION OF VERIZON**

Mpower Communications Corp. (“Mpower”) hereby files its Comments in Opposition to Emergency Petition of Verizon and hereby requests that the Commission reject the Petition filed by Verizon (“Verizon“ or ILEC) on July 24, 2002, seeking to modify its tariffs to increase deposits from other carriers and decrease the time for them to comply with Verizon’s demands prior to being disconnected. Although urging the Commission to protect “the entire industry,”<sup>1</sup> Verizon is actually seeking to protect only itself. It is requesting the authority to modify its tariffs in a manner which would be exceedingly detrimental to other carriers, which is unjust and unreasonable in violation of Section 201(b) of the Act and is unjustly discriminatory in violation of Section 202(a) of the Act.

---

<sup>1</sup> Verizon Petition for Emergency Declaratory and Other Relief, WC Docket No. 02-202, p. 2.

1. CLECs Could All Be Made to Pay Deposits Even If They Pay On Time

As noted by the IXC's that filed in opposition to the proposed Verizon tariffs filed about the same time as this emergency petition,<sup>2</sup> nearly 20 years ago, the Commission instituted the current protective language in ILEC tariffs. Current language already allows for security deposits where carriers pay late or have no credit history but only in those circumstances. Contrary to this long-standing policy, Verizon – and other ILECs that have recently filed similar tariffs -- argue for deposits or additional deposits based on “impaired credit worthiness.” What this means according to the proposed tariffs is if the competitive carrier’s debt securities are below investment grade or put on review for possible downgrade from investment grade, deposits can be required.

All telecommunications carriers have been buffeted in the markets over the last 18-24 months. All carriers’ stock has dropped precipitously regardless of whether they are CLECs, IXC's or ILECs. Obviously, the newer, competitive companies have usually been hurt more than the bigger, older incumbents, however, no carrier has been untouched. For the incumbents to use this fact to further penalize its competitors regardless of whether they have continued to pay their bills in a timely fashion is anti-competitive and unreasonably discriminatory. Further, requiring immediate, large deposits to all ILECs could well tip the balance against an already weakened CLEC.

A more common criterion for creditor concern is the filing of a voluntary or involuntary bankruptcy or receivership. Today, however, many CLECs are filing voluntary bankruptcies which do not necessarily have a significant impact on general

---

<sup>2</sup> WorldCom Petition to Reject, filed In the Matter of Verizon Tariffs No. 1, 11, 14 & 16, Transmittal No. 226, p. 6; and Petition of AT&T Corp., filed in the same matter, p. 4.

creditors. Mpower, for example, recently exited a voluntary, pre-arranged Chapter 11 reorganization. The primary purpose of Mpower's reorganization, however, was a transfer of control from stockholders to certain bondholders and preferred shareholders. This reorganization significantly reduced Mpower's debt but had little impact on most general creditors. For the most part, creditors continued to be paid in due course. Under the proposed tariffs, however, Mpower would be significantly penalized for taking steps to strengthen its balance sheet despite the fact that general creditors continued to be paid. This is not a just and reasonable result.

2. Chronically Inaccurate ILEC Bills Typically Result in Disputed Amounts in Excess of \$250,000

Verizon proposes to drastically reduce the amount of time carriers may have to comply with Verizon's demands in the event of any perceived violation of Verizon's tariffs, including failure to pay any amounts referenced in its tariffs. The proposed tariffs include a provision for deposits or prepayments if \$250,000 or more is overdue. The tariffs make no reference, however, to the exclusion of disputed amounts. All carriers would likely have disputed amounts in excess of \$250,000 due to chronically inaccurate bills from ILECs. Thus, the deposit and prepayment provisions and the proposed 7-day disconnection provision would potentially affect all carriers.

Carriers, CLECs and ILECs alike, should be paid in a timely fashion for services provided. The payment intervals for ILEC bills are already compressed to an

unreasonable degree, however. ILEC bills are enormous – thousands or even 10's of thousands of pages – whether in paper or electronic form.<sup>3</sup>

Most often paper bills do not arrive for 7-12 days from the billing date. Although electronic bills may arrive somewhat sooner, they are unlikely to arrive for at least 4-5 days from the billing date. Thus, ILECs are significantly shortening the CLEC payment intervals by not providing bills at the time they are dated.

Then, because the ILEC bills are huge, they take at least 5-10 days to process and review. Changes of any kind lead to chronic billing errors. When there are significant errors, which is usually the case, review and dispute procedures can take considerably longer. Management processes for payment approval and transmission of checks can also be time consuming.

The more ILEC errors the bills contain, the more likely the CLEC is to be “late” if it attempts to properly audit its bills prior to payment. No ILECs make timely changes to bills where rates change or when circuits are disconnected. There is always a delay of several months before rate changes or disconnected circuits are properly reflected on bills. Thus, CLECs must audit bills to avoid paying large amounts of inaccurate charges. The most conscientious CLEC, trying only to avoid paying these inaccurate charges, will likely have millions of dollars in disputes because of inaccurate billings, far in excess of the \$250,000 Verizon proposes.

Penalizing CLECs for paying “late” in any two months during a year because of a need to audit ILEC bills will cause ILECs to benefit from their bad billing behavior.

---

<sup>3</sup> From SBC affiliates, Mpower receives at least 50,000 pages of bills each month. While it does not receive such an enormous number of pages from Verizon as it does from SBC affiliates, the quantity is still substantial.

Those with the most egregious billing practices will benefit the most because CLECs will be forced to pay inaccurate, unaudited, or only partially audited, bills to avoid paying late. Further, they would be prohibited from disputing erroneous charges in excess of \$250,000. Thus, to avoid deposits or prepayments of estimated charges because of “late” payments or disputed and unpaid amounts in excess of \$250,000, CLECs will have to pay large amounts of billed charges that they do not owe and will be prohibited from proper auditing and disputing of erroneous billings. This is not a just and reasonable approach.

In fact, this situation would be particularly egregious with respect to Verizon. For the past 2-1/2 years, Verizon loop bills to Mpower have been so inaccurate they are unauditable. As a result, apart from the formal bill routinely generated, Mpower and Verizon have worked jointly each month, using a manual process, to develop sufficiently accurate information to allow Mpower to pay its bill. Mpower has never yet received an auditable loop bill from Verizon. Thus, for Verizon to demand the ability to penalize CLECs for not timely paying bills which are too inaccurate to use for payment purposes is outrageous.

### 3. Failure to Comply With Unreasonable ILEC Requirements Could Result in Drastic Measures Being Taken

The proposed tariffs do not just require deposits if a CLEC is viewed as being “credit impaired” or after a failure to pay on time – twice during a year. Companies, including ILECs, already have provisions allowing them to obtain deposits for failure to pay on time. The proposed tariffs require that a deposit of an estimated two month’s service charges be paid within 10 days of ILEC demand. After notice of failure to pay the deposit, regardless of the status of regular payments, the ILEC can take the following

series of drastic measures: 1) refuse any additional applications for service; 2) refuse to complete any pending orders for service; 3) discontinue the provision of all services to the customer,<sup>4</sup> and assess any potentially applicable charges, including termination charges.

This appears to be an easy means of putting competitors out of business! Declare that they are credit impaired based upon whether their securities are deemed investment grade by the market. Assess a large deposit. Since the tariffs, as written, would apply to all other carriers and two months' estimated service charges could be assessed, the deposits would always be substantial. There does not seem to be any means of disputing the ILEC's unilateral determination. If the CLEC does not immediately pay, the ILEC need only notify them that the ILEC will immediately refuse to do any further business with them of any kind. Clearly the CLEC cannot do business if it is disconnected by the ILEC. On top of that, it could be assessed termination charges. That could be adding insult to a fatal injury. Providing the ILEC both unbounded leverage and unilateral decision-making, even in the absence of any failure by the CLEC, is blatantly discriminatory and unfair.

It appears that in the guise of protecting itself, the ILEC is instead taking advantage of the market downturn and the weakness of CLECs to discriminate against its competitors. Using a criterion of \$250,000 that is 30 days past due without reference to disputed amounts is guaranteed to include most CLECs while having little or no impact on the ILEC's end-user customers. Such an approach is unjustly discriminatory.

---

<sup>4</sup> It is proposed that if the ILEC cannot unilaterally discontinue service to customer that other providers would be required to assist in denying service to customer.

#### 4. ILECs Want Complete Protection While Providing Non-Competitive Services

Verizon is not the only ILEC seeking complete protection from non-payment.

ILECs' existing tariffs permit deposits for a history of nonpayment. That is not unreasonable. In this instance, however, the aim clearly is to transfer competitive risks to competitors regardless of their positive payment behavior.

Mpower too would like to be assured that it would always be paid for its services. It tries to identify credit risks and takes steps to try to protect itself. Mpower, however, is providing competitive services. If it over-reaches, its customers will leave. Where services are competitive, it is generally not possible to avoid the risk that customers who are paying their bills will suddenly stop paying them.

The ILECs, however, are dominant carriers selling bottleneck services. CLECs cannot simply buy UNEs from another carrier. They must buy from the ILEC. ILECs should not be able to leverage their dominant position to demand deposits from all other carriers and to be able to put them out of business if they do not pay immediately, based solely upon the ILEC's assessment of the possibility that they might become a credit risk. This is inappropriate, unfair and anti-competitive.

#### 5. Conclusion

The ILECs already have a greater ability to protect themselves from potential credit risks than CLECs. They should not be able to use the WorldCom bankruptcy to achieve additional leverage over CLECs, along with the unilateral opportunity to put CLECs out of business if they do not comply with the ILEC's determination of their potential credit risk.

ILECs are already able to charge deposits to carriers that delay payments, even if the primary reason is the need to audit error-filled ILEC bills. CLECs need time to audit enormous and often erroneous billings prior to payment and should not be penalized for proper auditing and disputing of erroneous billings.

Therefore, the ILEC's "emergency" petition regarding increased carrier deposits and prepayments, as well as shortened notice periods prior to disconnection, should be rejected. Mpower takes no position on Verizon's requests as to Bankruptcy Court procedures.

MPOWER COMMUNICATIONS CORP.

Russell I. Zuckerman  
Senior Vice President & General Counsel  
Richard E. Heatter  
Vice President, Legal Affairs  
Marilyn H. Ash  
Counsel – Legal & Regulatory Affairs  
175 Sully's Trail – Suite 300  
Pittsford, NY 14534  
(716) 218-8678 (tel)  
(716) 218-0635 (fax)

August 15, 2002